

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

December 15, 2009

Charles R. Fulbruge III  
Clerk

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No. 08-31172  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DONALD JOSEPH BARNE,

Defendant-Appellant

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
USDC No. 2:06-CR-162-1

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Before KING, JOLLY, and SOUTHWICK, Circuit Judges.

PER CURIAM:\*

The Federal Public Defender appointed to represent Donald Joseph Barne has moved for leave to withdraw and has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967). Barne has not filed a response. The record is insufficiently developed to allow consideration at this time of any potential claim of ineffective assistance of counsel identified by counsel; such a claim generally “cannot be resolved on direct appeal when [it] has not been raised before the district court since no opportunity existed to develop the record on the

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

merits of the allegations.” *United States v. Cantwell*, 470 F.3d 1087, 1091 (5th Cir. 2006) (internal quotation marks and citation omitted). Our independent review of the record and counsel’s brief discloses no nonfrivolous issue for appeal. Accordingly, counsel’s motion for leave to withdraw is GRANTED, counsel is excused from further responsibilities herein, and the APPEAL IS DISMISSED. *See* 5TH CIR. R. 42.2.